

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LEONIS FRANKLIN,

Docket No. 07CV8590

Plaintiff,

RJS/DF
ECF CASE

-against-

FUJITEC SERGE OF NY and "JOHN DOE",
A FICTITIOUS NAME FOR A FOREMAN
EMPLOYED BY FUJITEC SERGE OF NY,

PETITION FOR
REMOVAL

Defendants.

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To: The Honorable Judges of the United States District Court
for the Southern District of New York

Defendant FUJITEC AMERICA, INC., incorrectly sued herein as above (hereinafter
"FAI"), by its attorney, GERALD NEAL SWARTZ, respectfully shows as follows:

1. Upon information and belief, on or about September 5, 2007, a copy of the summons and complaint in this action was received by FAI outside the state, with respect to an action purportedly venued in the Supreme Court of the State of New York, County of Bronx, entitled "*Leonis Franklin, Plaintiff, against Fujitec Serge of NY and 'John Doe', a Fictitious Name for a Foreman Employed by Fujitec Serge of NY, defendants*". A copy of the summons and complaint is annexed hereto as Exhibit "A".

2. The above described civil action is brought in a state court, and is a civil action over which this Court has original jurisdiction under 28 U.S.C. §1332, and which may be removed to this Court by FAI, pursuant to the provisions of 28 U.S.C. §1441, in that it is a civil action, between citizens of different states, wherein the matter in controversy allegedly exceeds the sum of \$75,000, exclusive of interest and costs.

3. According to the summons and complaint, the plaintiff is an individual residing in the State of New Jersey, and upon information and belief, he is a citizen of the State of New Jersey.

4. Defendant FAI is a corporation, which is incorporated under the laws of the State of Delaware, having its principal place of business at 401 Fujitec Drive, Lebanon, Ohio 45036.

5. The Plaintiff alleges in his complaint that on or about July 11, 2006, while he was law fully and properly upon a certain premises, he was maliciously assaulted, beaten, pushed and shoved, as well as violently thrown down to the ground causing him personal injury, allegedly without just cause or provocation.

6. The claim purportedly stated by the plaintiff in his complaint against FAI is for alleged battery.

7. Written notice of the filing of this petition will be given to the attorney for the plaintiff, as required by law.

8. A true copy of this petition will be filed with the Clerk of the Supreme Court of the State of New York, County of Bronx, as provided by law.

WHEREFORE, FAI prays that the above action pending against it in the Supreme Court of the State of New York, County of Bronx, be removed therefrom to this Court.

Dated: New York, N. Y.
October 3, 2007

/S

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cc:

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